

§ 98.84

and 98.62(b) is less than an amount established by the Secretary shall not be subject to the following requirements:

- (1) The assurance at § 98.15(a)(2);
- (2) The requirement for certificates at § 98.30(a) and (d); and
- (3) The requirements for quality expenditures at § 98.51(a).

(g) Not more than 15 percent of the aggregate CCDF funds expended by the Tribal Lead Agency from each fiscal year's (including amounts used for construction and renovation in accordance with § 98.84, but not including the base amount provided under § 98.83(e)) shall be expended for administrative activities. Amounts used for construction and major renovation in accordance with § 98.84 are not considered administrative costs.

(h)(1) CCDF funds are available for costs incurred by the Tribal Lead Agency only after the funds are made available by Congress for Federal obligation unless costs are incurred for planning activities related to the submission of an initial CCDF Plan.

(2) Federal obligation of funds for planning costs, pursuant to paragraph (h)(1) of this section is subject to the actual availability of the appropriation.

§ 98.84 Construction and renovation of child care facilities.

(a) Upon requesting and receiving approval from the Secretary, Tribal Lead Agencies may use amounts provided under §§ 98.61(c) and 98.62(b) to make payments for construction or major renovation of child care facilities (including paying the cost of amortizing the principal and paying interest on loans).

(b) To be approved by the Secretary, a request shall be made in accordance with uniform procedures established by program instruction and, in addition, shall demonstrate that:

(1) Adequate facilities are not otherwise available to enable the Tribal Lead Agency to carry out child care programs;

(2) The lack of such facilities will inhibit the operation of child care programs in the future; and

(3) The use of funds for construction or major renovation will not result in a decrease in the level of child care serv-

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ices provided by the Tribal Lead Agency as compared to the level of services provided by the Tribal Lead Agency in the preceding fiscal year.

(c)(1) Tribal Lead Agency may use CCDF funds for reasonable and necessary planning costs associated with assessing the need for construction or renovation or for preparing a request, in accordance with the uniform procedures established by program instruction, to spend CCDF funds on construction or major renovation.

(2) A Tribal Lead Agency may only use CCDF funds to pay for the costs of an architect, engineer, or other consultant for a project that is subsequently approved by the Secretary. If the project later fails to gain the Secretary's approval, the Tribal Lead Agency must pay for the architectural, engineering or consultant costs using non-CCDF funds.

(d) Tribal Lead Agencies that receive approval from the Secretary to use CCDF funds for construction or major renovation shall comply with the following:

(1) Federal share requirements and use of property requirements at 45 CFR 92.31;

(2) Transfer and disposition of property requirements at 45 CFR 92.31(c);

(3) Title requirements at 45 CFR 92.31(a);

(4) Cost principles and allowable cost requirements at 45 CFR 92.22;

(5) Program income requirements at 45 CFR 92.25;

(6) Procurement procedures at 45 CFR 92.36; and;

(7) Any additional requirements established by program instruction, including requirements concerning:

(i) The recording of a Notice of Federal Interest in the property;

(ii) Rights and responsibilities in the event of a grantee's default on a mortgage;

(iii) Insurance and maintenance;

(iv) Submission of plans, specifications, inspection reports, and other legal documents; and

(v) Modular units.

(e) In lieu of obligation and liquidation requirements at § 98.60(e), Tribal Lead Agencies shall liquidate CCDF funds used for construction or major

renovation by the end of the second fiscal year following the fiscal year for which the grant is awarded.

(f) Tribal Lead Agencies may expend funds, without requesting approval pursuant to paragraph (a) of this section, for minor renovation.

(g) A new tribal grantee (i.e., one that did not receive CCDF funds the preceding fiscal year) may spend no more than an amount equivalent to its Tribal Mandatory allocation on construction and renovation. A new tribal grantee must spend an amount equivalent to its Discretionary allocation on activities other than construction or renovation (i.e., direct services, quality activities, or administrative costs).

(h) A construction or renovation project that requires and receives approval by the Secretary must include as part of the construction and renovation costs:

(1) planning costs as allowed at § 98.84(c);

(2) labor, materials and services necessary for the functioning of the facility; and

(3) initial equipment for the facility. Equipment means items which are tangible, nonexpendable personal property having a useful life of more than five years.

Subpart J—Monitoring, Non-compliance and Complaints

§ 98.90 Monitoring.

(a) The Secretary will monitor programs funded under the CCDF for compliance with:

(1) The Act;

(2) The provisions of this part; and

(3) The provisions and requirements set forth in the CCDF Plan approved under § 98.18;

(b) If a review or investigation reveals evidence that the Lead Agency, or an entity providing services under contract or agreement with the Lead Agency, has failed to substantially comply with the Plan or with one or more provisions of the Act or implementing regulations, the Secretary will issue a preliminary notice to the Lead Agency of possible non-compliance. The Secretary shall consider comments received from the Lead Agency within 60 days (or such longer

period as may be agreed upon between the Lead Agency and the Secretary).

(c) Pursuant to an investigation conducted under paragraph (a) of this section, a Lead Agency shall make appropriate books, documents, papers, manuals, instructions, and records available to the Secretary, or any duly authorized representatives, for examination or copying on or off the premises of the appropriate entity, including subgrantees and contractors, upon reasonable request.

(d)(1) Lead Agencies and subgrantees shall retain all CCDF records, as specified in paragraph (c) of this section, and any other records of Lead Agencies and subgrantees that are needed to substantiate compliance with CCDF requirements, for the period of time specified in paragraph (e) of this section.

(2) Lead Agencies and subgrantees shall provide through an appropriate provision in their contracts that their contractors will retain and permit access to any books, documents, papers, and records of the contractor that are directly pertinent to that specific contract.

(e) *Length of retention period.* (1) Except as provided in paragraph (e)(2) of this section, records specified in paragraph (c) of this section shall be retained for three years from the day the Lead Agency or subgrantee submits the Financial Reports required by the Secretary, pursuant to § 98.65(g), for the program period.

(2) If any litigation, claim, negotiation, audit, disallowance action, or other action involving the records has been started before the expiration of the three-year retention period, the records shall be retained until completion of the action and resolution of all issues that arise from it, or until the end of the regular three-year period, whichever is later.

§ 98.91 Non-compliance.

(a) If after reasonable notice to a Lead Agency, pursuant to § 98.90 or § 98.93, a final determination is made that:

(1) There has been a failure by the Lead Agency, or by an entity providing services under contract or agreement